

OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan

County Executive

Charles W. Thompson, Jr. County Attorney

July 8, 2003

Elizabeth A. Kellar, Chair Montgomery County Ethics Commission 100 Maryland Ave., Room 204 Rockville, MD.

Re: Petition of Charles A. Moose For Judicial Review of the Decision of the Montgomery County Ethics Commission, In the Circuit Court for Montgomery County, Maryland., Civil No. RDB 01-1414; and

Moose v. Kellar, et al. In the U.S. District Court for the District of Maryland, Case No. 241707-V.

Dear Madam Chair:

Enclosed are:

- 1. One of the two executed agreements for settling and dismissing the referenced litigation; and
- 2. A check, drawn on the trust account of Mr. Moose's attorney's law firm, and made payable to Montgomery County, Maryland, in the amount of \$4,250.

Mr. Karp and I have executed the documents dismissing the lawsuits, and Mr. Karp has filed them in the respective courts this morning.

Wery truly,

Judson P. Garrett, Jr.

Associate County Attorney

AGREEMENT

The Parties to this Agreement are Charles A. Moose (hereinafter "Moose") and the Montgomery County Ethics Commission and Elizabeth K. Kellar, in her official capacity os the Chair of the Commission, (jointly the "Commission").

Whereas, the Commission has issued Advisory Opinion No. 03-011 ("Opinion") in which the Commission: (1) concluded that so long as he is a Montgomery County employee, Moose may not engage in certain outside employment in connection with a certain book or movie without a waiver of the Montgomery County Ethics Law's prohibition against the use of prestige of office and (2) declined Moose's request for a waiver of that prohibition; and

Whereas, Moose has sought judicial review in the Circuit Court for Montgomery County (Civil No. 241707) of that Opinion's outside employment decision and waiver denial, and has instituted an action under 42 U.S.C. § 1983 in the United States District Court for the District of Maryland (Civil No. RBD 03-1414); and

Whereas, Moose continues to assert that the application of the Ethics Law's prestige of office prohibition to him, under the circumstances set forth in the Opinion, violates his constitutional rights; and

Whereas, the Commission continues to assert that its Opinion is correct and the prestige of office prohibition does not violate Moose's constitutional rights; and

Whereas, Moose resigned his position as Chief of Police of Montgomery County on June 23, 2003, effective June 28, 2003; and

Whereas, the Commission has determined that, under all of the circumstances, as set forth herein, the public interest and the integrity of the Montgomery County Ethics law require no further action by the Commission; and

Whereas, the Parties desire to avoid unnecessary litigation;

In order to reach a full and final settlement of all claims, the Parties make this Agreement:

- 1. Book. Moose makes the following representations:
 - A. Prior to the effective date of his resignation, Moose entered into only one book contract; a contract with the Dutton publishing company to co-author a book tentatively titled "Three Days in October" (the "book").

- B. Prior to the effective date of his resignation, Moose did not receive any income (and was not entitled to receive any income) under any book contract. He will, in fact, not receive any income until the hard cover publication of the book.
- 2. Movie. Moose represents that:
 - A. he has only one movie contract;
 - B. the contract is an option contract with Cates/Doty Productions for which he has received full payment in the amount of \$4,250; and
 - C. Cates/Doty Productions has not yet exercised that option.
- 3. Speaking Fees. Moose represents that he has not received and is not entitled to receive any fees for any speech made while he was an employee of Montgomery County.
- 4. Confidential Information. Based upon the best of his knowledge, information, and belief, Moose represents that he has not disclosed, and will not disclose, information that would violate the confidentiality provisions of the Montgomery County Ethics Law.
- 5. Ethics Complaint; civil and criminal penalties; civil action.
 - A. The Commission, based upon Moose's representations set forth herein, agrees that, absent a breach of this Agreement by Moose, it will not, on its own initiative, file any ethics complaint or institute any action or other proceeding based upon the prestige of office prohibition to recover any monies arising out of the book or movie that Moose receives after the effective date of his resignation.
 - B. Absent a breach of the Ethics Law's confidentiality prohibition, any such funds are Moose's sole property, and he is free to keep or donate them as he chooses.
 - C. Nothing in this section, however, precludes the Commission from the lawful performance of its responsibilities in connection with any complaint filed by a third-party.
 - D. If either the Commission (without violating this agreement) or a third party files an administrative complaint alleging that Moose has violated any provision of the Ethics law, this agreement does not prevent Moose from:

- (a) asserting any claim or defense; and (b) exercising his right, under the County Ethics law, to judicial review of any final decision of the Ethics Commission. If the Commission files an administrative complaint contrary to this agreement, this agreement does not prevent Moose from taking any action he believes is necessary to protect his rights, including, but not limited to, reinstating any causes of action referenced in paragraphs, 7 and 8, *infra*.
- 6. Speaking Engagements. The Commission agrees that, absent a breach of the Ethics Law's confidentiality prohibition, it will not institute, pursue, or support any action seeking to restrain the book or movie or any speaking engagement by Moose after the effective date of his resignation. Nothing in this section, however, precludes the Commission from the lawful performance of its responsibilities in connection with any complaint filed by a third-party.
- 7. District Court Suit. Moose shall dismiss his lawsuit pending in the United States District Court, without prejudice, but will not reinstitute it absent a breach of this Agreement by the Commission.
- 8. Circuit Court Suit. Moose shall dismiss the judicial review action pending in the Montgomery County Circuit Court, without prejudice, but will not reinstitute it absent a breach of this Agreement by the Commission.
- 9. Payment to County of All Monies Received Prior To Resignation. In settlement of the Commission's claim of entitlement, and not as a fine or civil penalty, Moose agrees to pay to Montgomery County, Maryland, the amount of \$4,250, which is the total amount received by him in connection with the movie prior to the effective date of his resignation.
- 10. Waiver. In no event does this Agreement prohibit any Party from raising in any future litigation, not instituted contrary to this Agreement, any claim or defense that it could have raised prior to the execution of this Agreement.
- Representations. The representations made in this Agreement are material representations that have induced the parties to enter into this Agreement, and if any representation is incorrect, the party that made that representation has breached the Agreement and may not enforce this Agreement, and the other party may enforce the Agreement and pursue any remedy otherwise available to it.
- 12. Enforcement. Any Party may take appropriate action to enforce this Agreement.
- 13. Integration. The Parties agree that this Agreement contains and comprises the entire Agreement and understanding of the Parties and is effective upon the

signature of all Parties below; that there are no additional promises or terms of the Agreement among the Parties other than those contained herein; and that this Agreement shall not be modified except in writing signed by or on behalf of each of the Parties hereto. Moose executes this Agreement of his own free will, knowingly, voluntarily, and after consulting with legal counsel, without relying on any promises or representations other than those expressed in this Agreement.

- 14. Attorney Representation. Moose acknowledges that he has had an opportunity to be represented by an attorney of his choice before signing this Agreement, and that the Commission, if not previously, then by this paragraph, has encouraged him to consult with an attorney. Moose has fully reviewed the terms of this Agreement with his attorney and, based upon that review and after the opportunity to confer with representatives of his choice, Moose hereby acknowledges that he understands and accepts the terms of this Agreement. Moose further acknowledges that he is satisfied with the representation that he has received from his attorney.
- Negotiated Agreement. This Agreement represents a fully negotiated agreement. Each Party has been afforded the opportunity, which it has exercised, to review the terms of the Agreement. This Agreement must not be construed for or against any Party based on the principle that ambiguities are construed against the drafter.
- 16. Counterparts. This Agreement may be executed by the Executing Parties in several counterparts, through original and/or facsimile signature, and as executed shall constitute one agreement.
- 17. Execution. This Agreement is executed by Charles A. Moose, on behalf of himself, and by Elizabeth K. Kellar, the Chair of the Montgomery County Ethics Commission, on behalf of herself in her official capacity, and the Commission. Ms. Kellar hereby represents that she is authorized to execute this Settlement Agreement and bind the Commission.

Whereupon the Parties hereto have executed this Agreement this day of July, 2003.

Charles A. Moose

Witness: Winds L. Moose

or Witness: Dene detto Strangs

Elizabeth K. Kellar, Chair

Montgomery County Ethics Commission